

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

11-28-07
04:59 PM

Order Instituting Rulemaking Into the Review of the)
California High Cost Fund-B Program)

R. 06-06-028

**REPLY COMMENTS OF
TIME WARNER TELECOM OF CALIFORNIA, L.P. (U-5358-C) AND THE
CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION
REGARDING SCOPING AND SCHEDULING OF PHASE II ISSUES**

Time Warner Telecom of California, L.P., and the California Cable & Telecommunications Association, by their attorneys, hereby file the following Reply Comments regarding the Scoping and Scheduling of Phase II Issues.¹ Our Reply Comments are deliberately brief, emphasizing the need to reform the CHCF-B *without* the wasted-step attempting to “update” support levels by relying on the now-obsolete HM 5.3 model. Commentators recommending HM 5.3 want only to use the excuse of this model to increase default support levels (albeit under the label of the auction’s “reserve price”).

As we have noted in previous comments, the cable industry, as well as the CLEC industry, have built networks and provided service to their customers, even in high cost areas, through their own investment, while their primary competitors, the ILECs, continued to receive hundreds of millions of dollars in public subsidy. In order to achieve true market parity, those subsidies must be eliminated.

The Comments make clear how truly difficult it is to reform any program once it has become (at least in the eyes of its incumbent CHCF-B recipients) a corporate entitlement. Calls for reform in the guise of “updating” support levels are little more

¹ *Assigned Commissioner's Ruling Regarding the Scoping and Scheduling of Phase II Issues* 06-06-028, filed October 5, 2007 (“*Phase II Scoping Order*”).

than poorly masked efforts to increase support payments, using the computational-cover of HM 5.3 to avoid any serious examination of need. For instance, AT&T endorses the effort, predicting that it “is quite likely the update will reveal *new* high-cost areas that require support,”² as though the land mass of California is increasing, with these heretofore unknown regions emerging as new high-cost areas. For its part, Verizon acknowledges that cost proxy models are “inherently unreliable and inaccurate” measures of absolute *cost* levels,³ yet goes on to propose that the Commission rely on such models to determine absolute *support* levels nevertheless.

Why would Verizon both criticize and endorse HM 5.3 in the same pleading? For a simple reason: To increase its revenues and profits. Verizon goes so far as to propose changing HM 5.3 to include an adjustment that would effectively shift the cost of its competitive losses into the high-cost fund:

Specifically, as a COLR is obligated to serve all customers in the designated area, facilities must be constructed to serve all housing units, even if some are served by competitors. Therefore, the costs to build to the entire area should be assigned or recovered over working lines.⁴

Verizon’s so-called COLR adjustment is nothing more than a “competitive reimbursement” scheme, designed hold Verizon harmless from the gains of competitive entry. The proposed adjustment would rob California consumers of any benefit from facilities-based competition, because each line that moved to a competitor would merely increase Verizon’s support. Wireline networks frequently “pass” premises that subscribe

² *Phase II Comments of AT&T California, et. al*, November 9, 2007 (“*AT&T Comments*”) at 14. Emphasis added.

³ *Comments of Verizon Regarding the October 5, 2007 Assigned Commissioner's Ruling on Issues Relating to the Scoping and Scheduling of Phase II Issues*, November 9, 2007 (“*Verizon Comments*”) at 18.

⁴ *Verizon Comments* at 20.

to the services of other providers – that is the indisputable nature of competition between competing networks. These choices, however, are not permanent. Verizon freely competes to win-back customers that it has lost (which then causes the competing network to be idle to that premise); while both networks compete to be the choice of new subscribers as these premises inevitably turn-over between new owners and old.

The Commission has already decided to experiment with a new and bolder path to USF reform by conducting a reverse auction to determine support levels. In our *Phase II Scoping Comments*, we opposed the Commission imposing *a priori* limits (in the form of a HM 5.3 determined “reserve price”) on the initial reverse auction.⁵ We want to make clear, however, that our opposition to placing limits on the reserve auction process was predicated on our assumption that the auction would only occur where there are, in fact, multiple network bidders. The Commission should not conduct an auction in the hope that it will *attract* bidders, while otherwise guaranteeing support based on an obsolete model. Rather, the Commission should only conduct auctions for areas where the Commission has predetermined that multiple carriers will bid, ensuring a competitive result.

Although we support the Commission’s experiment with a reverse auction approach, we are aware that the process exposes a fundamental paradox. That is, the reverse auction only *works* in areas served by multiple networks; yet, where there are multiple networks, there is competition and deregulation, and *no justification* for

⁵ *Comments of Time Warner Telecom of California, L.P. (U-5358-C) Regarding Scoping and Scheduling Of Phase II Issues*, November 9, 2007 (TWTC Comments) at 4; and *Comments of the California Cable and Telecommunications Association Regarding Scoping and Scheduling Of Phase II Issues*, November 9, 2007 (CTCA Comments) at 3.

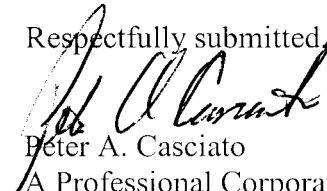
providing subsidy because prices are free to rise (or fall) to market levels, with or without the subsidy. The “reverse auction paradox” is that the auction approach itself requires the same conditions – multiple, competing networks -- that otherwise justify eliminating the subsidy altogether. At the very least, it compels further workshops to ensure that the reverse auction process does not become a new vehicle for distributing funds where they are not needed.

This observation brings us to our final comment and recommendation. There is nothing to be gained by determining new support levels using an obsolete cost model (a point we explained fully in our opening comments). On the other hand, the most likely result from a reverse auction (properly limited to only those areas where multiple networks are positioned to bid) is market-based support levels at or near zero. The best solution is sometimes the most simple and direct: The Commission should leave open the option to simply eliminate the CHCF-B program effective January 1, 2009, as recommended by Sprint Nextel.⁶

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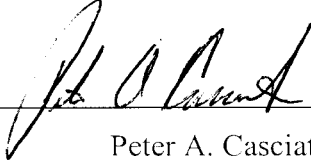
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November 28, 2007

⁶ *Comments of Sprint Nextel on Assigned Commissioner's Ruling on Issues Relating to the Scoping and Scheduling of Phase II Issues*, November 9, 2007, at 5.

CERTIFICATE OF SERVICE

I, Peter A. Casciato, hereby certify that copies of the foregoing "Reply Comments of Time Warner Telecom of California, LP" have been served on the persons listed on the Electronic Service List for Rulemaking 06-06-028 by electronic mail, this 28th day of November, 2007.



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